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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,600	01/16/2004	Masao Hashimoto	163852020400	5379

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EXAMINER

TOTH, KAREN E

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 09/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,600

Applicant(s)

HASHIMOTO ET AL.

Examiner

Karen E. Toth

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Sullivan (US Patent 5494043) in view of Chesney'188 (US Patent 6544188).

Regarding claim 1, O'Sullivan'043 discloses a pulse wave measuring apparatus comprising a sensor unit (element 10) having a pressure sensitive portion (element 12) and a device for fixing a living organism (element 50). The device includes a fixing stand (element 50) and a band for connecting the fixing stand and the sensor unit and fixing the organism to the stand (element 52), where pressing the sensor unit against the organism activates the unit (column 8, lines 21-29) – the strap holds the sensor unit in place so that it may be activated (that is, the pressure bubble inflates). The pressure sensitive portion is pressed against the living organism to measure the pulse while the organism is fixed by the fixing device (column 3, lines 28-39; column 8, lines 27-33). The fastening band has two portions, each with one end on the sensor unit and the other on the fixing stand (figure 5). O'Sullivan'043 does not disclose one of the fastening band portions being removably mounted on the fixing stand, or the stand including a tensioning part for pulling the other end of a band portion with a predetermined force.

Chesney'188 teaches a device for measuring a pulse signal comprising a sensor unit (element 200) and a fixing device (element 110). The fixing device includes a fixing stand (element 112) with bands that are used to fix the organism to the stand (elements

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114 and 117); the bands are fixed at one end (figure 1A) and removably connected at the other (column 6, lines 43-46) so that the organism's limb may be easily inserted without having to maneuver between straps. Additionally, the bands may be tightened by pulling with any desired force (column 6, lines 43-56), in order to ensure an accurate fit upon the organism.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of O'Sullivan'043, with a strap that is removably connected on one end, as taught by Chesney'188, so that the organism's limb may be easily inserted without having to maneuver between straps, and configured the straps to tighten upon pulling, also as taught by Chesney'188, in order to ensure an accurate fit upon the organism.

Regarding claim 2, Chesney'188 further teaches that one end of the fastening band (elements 114 and 117) is immovably fixed to the fixing stand (element 112) (figure 1) in order to prevent detachment of the apparatus components.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of O'Sullivan'043 in view of Chesney'188 and immovably fixed one end of the fastening band to the fixing stand, as taught by Chesney'188, in order to prevent detachment of the apparatus components.

Response to Arguments

3. Applicant's arguments filed 21 July 2006 have been fully considered but they are not persuasive.

4. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the device of O'Sullivan'043 has the hold-down bubble connecting the sensor unit and the fixing stand (remarks, page 7), it is clearly shown in figure 5 of O'Sullivan that fixing band 52 connects the sensor unit and the fixing stand.

In response to applicant's argument that Chesney'188 does not provide a tensioning part, the claim merely states that the tensioning part pulls the other end of the portion with a predetermined force. The hook-and-loop fastening of Chesney'188 clearly holds the free end of the band with a predetermined force, in that it prevents the end from moving at a desired and fixed tension. There is no suggestion in the claim that the predetermined force must be the same during each application, just that it should be decided upon prior to application of the device, which can also be done by having the person applying the device decide beforehand how much force should be used to hold the device in place, and adjusting the straps accordingly by pulling them.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, O'Sullivan'043 does not provide specifics as to how the fastening bands are attached between the fixing stand and the sensor portion. Chesney'188 provides a detailed description of how fastening bands may be attached for use in measuring in a similar position. In making the device of O'Sullivan'043, it would have been obvious to look to similar devices, such as that of Chesney'188, for instruction on how to use attach the bands.

5. The rejections stand as FINAL.

Allowable Subject Matter

6. Claims 3-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Regarding claim 5, the prior art of record fails to anticipate or make obvious the claimed structure, including, *inter-alia*, a pulse wave measuring apparatus comprising a

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brake member that is interlocked with a fastener on one band portion and is brought into contact with another band portion to immovably press it against a fixing stand.

8. The allowability of claims 3-4 and 6-13 was discussed in the previous Office Action.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen E. Toth whose telephone number is 571-272-6824. The examiner can normally be reached on Monday through Friday.

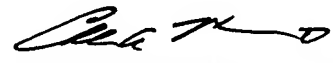
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Charles A. Marmor, II
SPE, Art Unit 3735